



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1997

Mr. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2393

Dear Mr. Calabrese:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110067.

The City of Houston (the "city"), which you represent, received a request for information concerning certain individuals. You have apparently determined that the requestor seeks police records in which these individuals are named in some capacity. You assert that the information requested is excepted from disclosure pursuant to section 552.108 of the Government Code.

We note that a request for all police records in which a named individual is a suspect is generally a request for the compilation of that individual's criminal history. Criminal history record information ("CHRI") must be withheld from required public disclosure under common-law privacy, as protected by section 552.101 of the Government Code, if it meets the test set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See also Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety). Under the *Industrial Foundation* test, information must be withheld from disclosure if it is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate concern to the public.

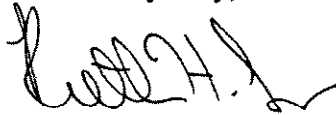
The privacy interest in CHRI has also been recognized by federal regulations which limit access to CHRI that states obtain from the federal government or other states. See 28 C.F.R. § 20; see also *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding CHRI protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions

issued by this office. *See* Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976). Thus, to protect the common-law privacy interests of the named individuals, you must withhold any information that lists the named individuals as suspects in the offense reports.

However, some of the submitted information does not list the named individuals as suspects. You assert that this report is protected from disclosure under section 552.108 because the records relate to what is apparently an ongoing investigation. We agree that section 552.108(a)(2) is applicable to ongoing investigations. However, please note that section 552.108(c) provides that "basic information" is not protected from disclosure. Thus, you must release front page offense report from this report, as this will provide the basic information concerning the incident. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 110067

Enclosures: Submitted documents

cc: Mr. Matt Wingo  
1506 Upland  
Houston, Texas 77043  
(w/o enclosures)